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June 12, 2007

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**RE: Finance Docket No. 35020
Northern and Bergen Railroad, L.L.C. –
Acquisition Exemption – a Line of
Railroad Owned by New York &
Greenwood Lake Railway**

Dear Secretary Williams:

Please accept these additional comments of New Jersey Transit Corporation ("NJ Transit") in the above-captioned proceeding. NJ Transit submits these comments in response to the June 8, 2007 reply of the Northern and Bergen Railroad, LLC ("NBR") (the "June 8 Reply").

Although the Board's May 25, 2007 decision¹ did not expressly provide a response period for NJ Transit following NBR's June 8 Reply, and replies to a reply are ordinarily not permitted under 49 C.F.R. § 1104.13(c), the Board construes its rules liberally to ensure a just determination of the issues presented. Holrail LLC – Construction and Operation Exemption – In Orangeburg and Dorchester Counties, SC, STB Finance Docket No. 34421 (Sub-No. 1) (Board served February 12, 2007). Consequently, the Board will permit such a filing when it provides a more complete record, does not delay the proceeding, and does not prejudice the opposing party. See, e.g., McCloud Railway Company – Abandonment and Discontinuance of Service Exemption – In Siskiyou, Shasta, and Modoc Counties, CA, Docket No. AB-914X (Board served August 25, 2006). Under this standard, and as set forth below, NJ Transit believes that the inclusion of these comments is necessary to provide a more complete record, ensure a just determination of this proceeding, and that the consideration of these comments will not otherwise delay the proceeding or prejudice the other parties.

¹ Northern and Bergen Railroad, L.L.C. – Acquisition Exemption – A Line of Railroad Owned By New York & Greenwood Lake Railway, STB Finance Docket No. 35020 (Board served May 25, 2007).

As previously described in prior submissions, the NBR presently seeks to acquire approximately 1.2 miles of spur trackage from the New York and Greenwood Lake Railway ("NY&GL") in Passaic and Garfield, New Jersey (the "Dundee Spur"). This spur track has a single connection to the railroad system, namely a siding owned by NJ Transit on the Bergen County rail line.

In 1979, New Jersey Commuter Operating Agency ("NJCOA") acquired the Bergen County Line pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4R Act"). The transaction was consummated on March 30, 1979, and all assets of NJCOA were transferred to NJ Transit pursuant to the New Jersey Public Transportation Act of 1979. NJ Transit has never owned the Dundee Spur itself. The Dundee Spur was instead subject to an abandonment proceeding by Conrail in 1996, and was subsequently purchased by NY&GL through the OFA provisions of former 49 U.S.C. § 10905(d). See Consolidated Rail Corporation – Abandonment Exemption – In Bergen and Passaic Counties, NJ, Docket No. AB-167 (Sub-No. 1151X) (Board served October 30, 1997); Consolidated Rail Corporation – Abandonment Exemption – In Bergen and Passaic Counties, NJ, Docket No. AB-167 (Sub-No. 1151X) (Board served August 9, 1996).

NY&GL interchanged freight traffic with Conrail, and after June 1st 1999, with Norfolk Southern at the Garfield Siding on the Bergen County Line under a Lease Agreement with NJ Transit governing the siding. The Lease Agreement with NY&GL has expired and even when in place expressly provided that it could not be transferred or assigned to any other party. As a new owner of the Dundee Spur, NBR must still enter into a valid lease agreement with NJ Transit for use of the siding. While NJ Transit does not have any issue with freight traffic interchange at the siding on a conceptual level, NJ Transit must ensure that any party seeking to do so will comply with its necessary terms, such as safety, operational, environmental, financial, insurance and indemnity requirements. One reason NY&GL's operating lease has expired and has not been renewed is that NY&GL has not complied with NJ Transit's liability indemnification requirements.

Similarly, NJ Transit has significant operational concerns related to NBR's proposed exemption. Due to ridership growth and capital investments, NJ Transit now operates 70 trains per day on the Bergen County Line, a significant increase over the levels operated when the Lease Agreement was signed. NJ Transit expects passenger train volume to increase in future years. NJ Transit has examined certain traffic volumes supplied by Northern and Bergen on Page 4 of the May 16th Letter from Jeffrey Moreno to Ruth E. Carter, Deputy Attorney General, Attachment B to the May 18, 2007 NBR Reply to Request for Stay. NJ Transit needs to evaluate whether such volumes can be handled without adversely impacting NJ Transit operations on the Bergen County Line. In addition NJ Transit needs to assess the liability and risk impact of NBR's proposed traffic (including waste) when negotiating any future lease agreements with NBR.

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Finally, NJ Transit wishes to address NBR's allegations that NJ Transit and the New Jersey Department of Environmental Protection ("NJDEP") are "engaged in a concerted effort to devise any reason to stay this transaction." June 8 Reply, at 1. These allegations are baseless and indicate nothing more than NBR's ongoing efforts to apparently utilize federal preemption to avoid both state regulatory oversight and the necessity of private contracts. NJ Transit is a separate, autonomous public entity and operates independently of the NJDEP. NJ Transit's interests in this proceeding are directly related to its ownership of the impacted Bergen County Line and siding, and its own legal, environmental, and safety obligations with regard to those properties.

For the foregoing reasons, NJ Transit respectfully submits that the Board should further stay the effectiveness of the exemption sought in this proceeding pending the execution of a lease between NJ Transit and NBR, or, at least, the submission and evaluation of information requested by NJ Transit from NBR.

Should you have any questions, please contact me. Thank you for your attention to this matter.

Sincerely,

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New Jersey Transit Corporation

c: Jeffrey O. Moreno, Esq.
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